In *Crook* v. *Whitbread*[8] the tenant continued to be in occupation after the expiration of the notice to quit and tendered the quarter's rent due but the landlord refused it. Subsequently, the landlord brought an action claiming double value under the Landlord and Tenant Act, 1730 and alternatively for use and occupation. Held, that, having regard to the provisions of the Increase of Rent and Mortgage Interest (War Restrictions) Act, 1915 which contemplated that so long as the tenant continued to pay the rent agreed and to perform the conditions of the tenancy, he should not be turned out of occupation, the defendant could not be said to be holding over contumaciously and was therefore not liable for double value under the 1730 Act. In dismissing the appeal from the decision of the County Court Judge Avory, J. referred to four cases and said at page 961:–

"In all those cases it held that there must be something in the nature of contumacy on the part of the tenant in holding over to render him liable to double value."

Although the provisions of section 28(4)(a) of the Civil Law Act may not be the same as the provisions of the Landlord and Tenant Act, 1730, *Crook* v. *Whitbread*[8] does support the view of the learned Judge, that is, to avoid double rent if the tenant's conduct in holding over the premises had been unreasonable. He made a decision based on the particular facts of the case. I see no reason to interfere with the exercise of his discretion. Accordingly, I would dismiss the cross-appeal with costs.

Yusoff Mohamed J. concurred.

Wan Suleiman F.J. (dissenting): We dismissed this appeal with costs, and I agree that our grounds for so doing are most adequately set out in the judgment of the Chief Justice of Borneo.

However, with the deepest respect I have come to a different conclusion on the cross-appeal, wherein respondents argued that in not awarding double rent from the date of expiry of the notice to quit i.e. March 1, 1971 the learned Judge was wrong in law.

Section 28(4)(a) of the Civil Law Act, 1956 on which the respondents rely reads:–

"Every tenant holding over after the determination of his tenancy shall be chargeable, at the option of his landlord with double the amount of his rent until possession is given up by him or with double the value during the period of detention of the land or premises so detained, whether notice to that effect has been given or not."

I am of the view that respondents are correct in saying that this leaves the Court with no discretion. At the option of the landlord the Judge will have to award double rent from March 1, 1971, the day on which the notice to quit expired.

In the face of such clear statutory provision as above, the requirement of contumacy on the part of the tenant in holding over in *Crook* v. *Whitbread*[8] cannot, in my view, be applicable.

I would therefore allow the cross-appeal, and award double rent from the date of expiry of the notice to quit viz. March 1, 1971. Costs of the cross-appeal to the respondent company.

Appeal dismissed.

Solicitors: *Subra Naicker & Co.; John Ang & Co.*

MOHAMED NORDIN BIN JOHAN v. ATTORNEY-GENERAL, MALAYSIA

[F.C. (Raja Azlan Shah, Ag. L.P., Abdul Hamid F.J. & Abdoolcader J.) September 17, 1982]

[Kuala Lumpur – Federal Court Civil Appeal No. 233 of 1982]

Administrative Law – Certiorari – Application for – Certificate of Attorney-General that commission of offence affects security of the Federation – Security case – Discretion of Attorney-General one of pure judgment and not amenable to judicial review – Essential (Security Cases) Regulations, 1975, Regulations 2 (2) & 6(1).

Practice and procedure – Certiorari – Application for – Leave refused – Appeal to Federal Court – Federal Court allowing appeal and exercising jurisdiction to hear substantive motion – Application dismissed – Application for declaration – Wrongly struck out – Appeal allowed but application withdrawn – R.H.C. 1980 O.18, r.19.

In this case the appellant together with four others were charged with the murder of the former Negri Sembilan State Assembly Speaker. The offence was alleged to have been committed 7 days after nomination day for the Federal and State Elections 1982. The Attorney-General who appeared for the prosecution tendered two certificates under regulations 2(2) and 6(1) of the Essential (Security Cases) Regulations, 1975, the effect of which was that the Attorney-General treated the offence as a security offence and specified the High Court Kuala Lumpur as the place of trial. He also successfully applied for the transfer of the case to the High Court Kuala Lumpur. The appellant applied for leave to apply for an order of certiorari to quash the two certificates and the order transferring the case to the High Court, Kuala Lumpur. The learned trial judge refused leave and the appellant appealed. The Federal Court allowed the appeal and granted the appellant leave to apply for the order of certiorari and then heard the substantive motion itself. The appellant had also applied for

declaratory relief but this had been struck out by the learned judge under Order 18 rule 19 of the Rules of the High Court, Kuala Lumpur.

Held: (1) the appellant should be granted leave to apply for an order of certiorari as the point taken was not frivolous to merit refusal of leave *in limine* and justified argument on a substantive motion for certiorari. When the Federal Court grants leave, it has jurisdiction to hear the substantive motion;

(2) Regulation 2(2) of the Essential (Security Cases) Regulations, 1975, attracts the pure judgment of the Attorney-General which cannot be subjected to an objective test and is not accordingly amenable to judicial review. The motion for an order of certiorari must therefore be dismissed;

(3) in the circumstances of this case certiorari is the appropriate remedy and not declaration;

(4) the application for declaratory relief should not have been struck out by the learned judge but in view of the decision of the court, it could be withdrawn and there after struck out.

Cases referred to:

(1) *Merdeka University Bhd.* v. *Government of Malaysia* [1981] 2 M.L.J. 356, 360.
(2) *Labour Department* v. *Merrit Beazley Homes Ltd.* [1976] 1 N.Z.L.R. 505, 506.
(3) *Romesh Thappar* v. *State of Madras* A.I.R. 1950 S.C. 124, 127.
(4) *Ram Nandan* v. *State* A.I.R. 1959 All. 101.
(5) *Public Prosecutor* v. *Su Liang Yu* [1976] 2 M.L.J. 128, 132.
(6) *R.* v. *Home Secretary, ex parte Hosenball* [1977] 1 W.L.R. 766, 781.
(7) *Mak Sik Kwong* v. *Minister of Home Affairs (No. 2)* [1975] 2 M.L.J. 175, 178.
(8) *Education Secretary* v. *Tameside Borough Council* [1977] A.C. 1014, 1047.
(9) *Regina* v. *Secretary of State for the Environment, ex parte Norwich City Council* [1982] 2 W.L.R. 580, 593.
(10) *Regina* v. *Industrial Injuries Commissioner, ex parte Amalgamated Engineering Union* [1966] 2 Q.B. 21.
(11) *Regina* v. *Croydon Justices, ex parte Lefore Holdings Ltd.* [1980] 1 W.L.R. 1465.
(12) *Hubli Electricity Company Limited* v. *Province of Bombay* L.R. 76 I.A. 57.
(13) *Sungai Wangi Estate* v. *Uni* [1975] 1 M.L.J. 136.
(14) *Anisminic Ltd.* v. *Foreign Compensation Commission* [1969] 2 A.C. 147; [1969] 1 All E.R. 208, 213, 233.
(15) *Re Tillmire Common, Heslington* [1982] 2 All E.R. 615, 622.

FEDERAL COURT.

Sri Ram for the appellant.

Tan Sri Abu Talib bin Othman, Attorney-General, Malaysia (*Lim Beng Choon*, Senior Federal Counsel with him) for the respondent.

Cur. Adv. Vult.

Raja Azlan Shah Ag. L.P. (delivering the Judgment of the Court): This is an appeal against the refusal of the learned judge to grant leave to apply for an order of certiorari to quash (i) the certificate issued by the Attorney General under regulation 2(2) of the Essential (Security Cases) Regulations, 1975, (ii) the consequential certificate issued by him under regulation 6(1) of the said Regulations and (iii) the consequential order of the learned Magistrate, Tampin, transferring the criminal case in question to the High Court, Kuala Lumpur.

On July 10, 1982 the appellant together with four others, one of whom is the Federal Minister of Culture, Youth and Sports, were charged in the Magistrate's Court at Tampin, Negeri Sembilan with the murder of the former Negeri Sembilan State Assembly Speaker, Dato' Mohd. Taha bin Talib, an offence punishable under section 302 of the Penal Code read with section 34 of the same Code. The alleged offence was committed on April 14, 1982 that is 7 days after nomination day for the Federal and State General Elections 1982 which were held on April 22, 1982.

The learned Attorney General who appeared for the prosecution tendered two certificates under regulations 2(2) and 6(1) of the Essential (Security Cases) Regulations, 1975. The effect of the two certificates is that the Attorney General treated the offence as a security offence and specified the High Court, Kuala Lumpur as the place of trial. He then successfully applied for transfer of the case to the High Court, Kuala Lumpur. On July 13, 1982 the appellant together with the other three (one has since died) appeared before the High Court, Kuala Lumpur. They claimed trial. The case was then fixed for hearing to commence on October 11, 1982.

Regulations 2(2) and 6(1) of the Essential (Security Cases) Regulations, 1975 read as follows:

"2(2) Where the commission of any offence against any written law other than sections 57, 58, 59, 60, 61, and 62 of the Internal Security Act, 1960, in the opinion of the Attorney General, affects the security of the Federation, he shall issue a certificate to that effect and the case shall thereupon be dealt with and tried in accordance with these Regulations."

"6(1) Where a security case is triable by the High Court, no preliminary enquiry shall be held in respect thereof, and the Magistrate before whom the accused is produced shall forthwith commit the accused for trial by the High Court at such place (whether within the same State or not) as the Public Prosecutor may specify and upon such charge as the Public Prosecutor may prefer."

On July 29, 1982 the appellant filed an *ex parte* originating motion for leave to apply for an order of certiorari to quash the two certificates and the order of the learned Magistrate transferring the case to the High Court, Kuala Lumpur. The gravamen of the appellant's case is that murder is not an offence which affects the security of the Federation in the context of regulation 2(2). Counsel on his behalf said that the regulation is framed in an "objective" form – "in the opinion" of the Attorney General. He submitted that there is a condition precedent to be fulfilled before the Attorney General can classify the case as a security offence, namely, that the offence must be one that affects the security of the Federation. He said the appellant is not a communist, a communist terrorist or insurgent or a subversive element, nor are the other three accused persons. Therefore it is contended that the Attorney General had acted on extraneous considerations which ought not to have influenced him and he had thus acted in excess of the power conferred upon him by the regulation. Counsel referred us to the following cases: *Merdeka University* v. *Government of Malaysia*[1]; *Labour Department* v. *Merrit Beazley Homes Ltd.*[2]; *Romesh Thappar* v. *State of Madras*[3]; *Ram Nandan* v. *State*[4]; *Public Prosecutor* v. *Su Liang Yu*[5]; *R.* v. *Home Secretary, Ex parte Hosenball*[6].

On the other hand the Attorney General argued that the power conferred upon him by regulation 2(2) is one of pure judgment and is not reviewable by this court. He said the test is subjective and referred us to the following cases: *Mak Sik Kwong* v. *Minister of Home Affairs (No.2)*[7]; *Education Secretary* v. *Tameside Borough Council*[8]; *Regina* v. *Secretary of State for the Environment, Ex parte Norwich City Council*[9].

We allowed the appeal and granted the appellant leave to apply for an order of certiorari because we are of the view that the learned judge was wrong in refusing leave as the point taken was not frivolous to merit refusal of leave *in limine* and justified argument on a substantive motion for certiorari. When this Court grants leave, it has jurisdiction to hear the substantive motion itself. This practice is not inconsistent with the one in vogue in England: see *Regina* v. *Industrial Injuries Commissioner, Ex Parte Amalgamated Engineering Union*[10] which was followed in *Regina* v. *Croydon Justices, Ex Parte Lefore Holdings Ltd.*[11]

We now turn to the substantive motion which counsel for the appellant undertook to formally file in the registry. In our view the sole question which the court must ask itself, and answer, in this case is simply whether regulation 2(2) confers on the Attorney General a discretion which is a matter of pure judgment or it imposes a condition that there must in fact exist some basis which he must take into consideration before he can validly exercise the discretion, the condition being that the commission of the offence affects the security of the Federation. We note that regulation 2(2) is certainly draconian in its terms. On the other hand Parliament has authorised the Yang di-Pertuan Agong to make the Regulations read in the light of its context, background and purpose in such a way as to confer a wider power on the Attorney General than that as for example conferred on the Secretary of State in the *Tameside Case (supra)* which was held to attract the objective process. In this connection we would refer to a judgment of the Judicial Committee of the Privy Council in *Hubli Electricity Company, Limited* v. *Province of Bombay*[12]. In that case section 4, sub-section 1, of the Indian Electricity Act, 1910, which was the subject for determination, reads as follows:

> "The Provincial Government may, if in its opinion the public interest so requires, revoke a licence in any of the following cases, namely: (a) where the licensee in the opinion of the Provincial Government makes wilful and unreasonably prolonged default in doing anything required of him by or under this Act."

It was held on the construction of that provision that it was the subjective opinion of the government which was relevant; not the grounds on which the opinion is based. Further, the relevant question was that there had been a wilful and unreasonably prolonged default; not that a default had been wilfully and unreasonably prolonged. Similarly, in the present case, we think the subjective opinion of the Attorney General that the alleged commission of the offence of murder by five accused persons affects the security of the Federation is the determinative factor. The language of the regulation leaves no room for the relevance of a judicial examination as to the sufficiency of the grounds on which he acted in forming his opinion. His opinion in the context of the regulation in question is not open to review and a contrary construction would render inefficacious the whole purpose and scheme of the Regulations as a whole. As Lord Wilberforce said in *Tameside* (*supra* at page 1047):

> "But there is no universal rule as to the principles on which the exercise of a discretion may be reviewed: each statute or type of statute must be individually looked at."

We therefore conclude that regulation 2(2) attracts the pure judgment of the Attorney General cannot be subjected to an objective test and is not accordingly amenable to judicial review. We accordingly dismissed the motion for an order of certiorari.

That is not the end of the matter before us. There was another appeal (Federal Court Civil Appeal No.218/82) by the appellant regarding an originating summons for declaratory relief which he had earlier brought and which was struck out by the learned judge under Order 18, rule 19 of the Rules of the High Court, 1980. The appellant had also in that case sought to similarly impugn the certificates issued by the Attorney General under regulations 2(2) and 6(1) of the Essential (Security Cases) Regulations, 1975 and the order of the learned magistrate transferring the case to the High Court, Kuala Lumpur. We think that in the circumstances of this case certiorari is the appropriate remedy to be sought and not a declaration, and we need only refer to the judgment of Abdoolcader, J. in *Sungai Wangi Estate* v. *Uni*[13]; *Anisminic Ltd* v. *Foreign Compensation Commission*[14] (per Lord Reid at page 213 and per Lord Pearce at page 233) and *Re Tillmire Common, Heslington*[15] in support. To dispose of this matter we allowed this other appeal and set aside the judgment of the learned judge in that case, and counsel on behalf of the appellant then very properly at our suggestion withdrew the originating summons which we accordingly struck out.

Order accordingly.

Solicitors: *Sri Ram, Zulkifly & Kumar.*

JAGINDER SINGH & ORS. v. ATTORNEY-GENERAL

[F.C. (Raja Azlan Shah Ag. L.P., Abdul Hamid F.J. & Abdoolcader J.) September 24, 1982]

[Kuala Lumpur – Federal Court Criminal Appeal Nos. 28, 29 & 30 of 1982]

Criminal Law & Procedure – Contempt of Court – Whether advocates and solicitors guilty of contempt – Persons defendants in civil action and sued in their personal capacity – Borderline between perjury and contempt – Persons committed not informed of the specific offence or offences with which they were charged and not given an opportunity of defending themselves – Order of contempt set aside.

In this case the appellants, who were advocates and solicitors, were defendants in a civil case involving a land matter. After a trial which lasted 28 days spread over a period of three months, the learned Judge gave judgment in favour of the plaintiff and against the defendants. He went further and without specifying any charge or charges and without giving them an opportunity to defend themselves, committed each of the appellants to imprisonment for a term of two years for contempt of court on the ground that they had conspired to deceive the court by representing appellant No. 3 as the owner of the land, the subject matter of the case, when in reality he was not. The appellants appealed. It was argued (a) that the learned judge was not justified in concluding on the facts that the appellants were guilty of contempt and (b) the learned judge erred in law in committing the appellants for contempt of court without first informing them of the specific offence or offences with which they were being charged and without giving them an opportunity of defending themselves.

Held: (1) as a finding of contempt of court is a conviction of an offence, the jurisdiction must be exercised sparingly and where it is absolutely necessary;

(2) To take a case across the borderline that separates perjury from contempt, there must be a manifestation in some form of an intention on the part of the witness not to give a real answer. False testimony together with a refusal to answer questions amounts to an obstruction of the administration of justice which is punishable as a contempt; false testimony without more does not;

(3) in the present case the appellants were defendants in a civil action and sued in their personal capacity but the learned judge found them in contempt of court as advocates and solicitors and in their professional capacity. Mere false testimony does not constitute contempt but contempt of court will lie not only in the false testimony but in the obstruction or frustration of the administration of justice. In this case the conclusion of the learned judge that the appellants were guilty of contempt was not justified;

(4) the summary contempt procedure should be employed most sparingly and should rarely be resorted to except in those exceptional cases where it is urgent and imperative to act immediately to preserve the integrity of the trial in progress or about to commence;

(5) in this case where the case has ended there was no imperative need for instant punishment as is shown by the period that has elapsed between the conclusion of the trial and the delivering of judgment, a period of some eight months;

(6) the disturbing aspect in this case was that no specific charges against the appellants were distinctly stated and what was worse they were not given an opportunity to answer and defend themselves. It was unthinkable that they should be sent to prison unless specific charges were framed and they have had an opportunity to answer them. What vitiated the committal for contempt of court in this case was the learned Judge's failure to make plain to the appellants the specific nature of the charges and to give them the opportunity of a fair hearing.

Cases referred to:

1. *Izuora* v. *R.* [1953] A.C. 327, 334-5.